



#14/Reply Brief
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Daniel I. Kerpelman et al.

Serial No.: 09/470,554

Filed: December 22, 1999

For: INTEGRATED INTERACTIVE
SERVICE TO A PLURALITY OF
MEDICAL DIAGNOSTIC
SYSTEMS

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Group Art Unit: 3626

Examiner: Morgan, Robert W.

Atty. Docket: GEMS:0066/YOD
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GROUP 3600

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February 3, 2004 Date	 Lynda Howell

REPLY BRIEF PURSUANT TO 37 C.F.R. §1.193

This Reply Brief is being filed in response to the Examiner's Answer mailed on December 3, 2003.

Appellants file this Reply Brief to address certain statements made by the Examiner in the Examiner's Answer. First, Appellants will address the Examiner's statements regarding the grouping of the claims. Secondly, Appellants will address certain statements made by the Examiner in regards to the rejections formulated in the Response to Argument section of the Examiner's Answer.

Grouping of the Claims

First, Appellants note that the Examiner disagreed with the grouping of the claims. Specifically, the Examiner did not agree with the grouping of independent claim 1 with dependent claims 2-13 and 15, independent claim 16 with dependent claims 17-24, and independent claim 25 with dependent claims 26-32. The Examiner stated that

Appellants failed to provide separate explanations as to why each of the above groups is separately patentable and independent from one another. Accordingly, the Examiner proposed that the grouping of the claims should be claims 1-13 and 15-32 as one group that will stand or fall together.

Appellants respectfully traverse the Examiner's proposed grouping of the claims. Under 37 C.F.R. § 1.192(7), the Board shall select a single claim from the group unless (1) a statement is included that the claims of the group do not stand or fall together, and (2) appellant explains why the claims of the group are believed to be separately patentable in the argument section. Further, M.P.E.P. §1206 emphasizes this point as indicated in a section that requires an Appellant to perform two affirmative acts in his or her brief in order to have the separate patentability of a plurality of claims subject to the same rejection considered. *See* M.P.E.P. §1206. The acts that Appellants must perform are (A) state that the claims do not stand or fall together and (B) present arguments why the claims subject to the same rejection are separately patentable. *See id.*

In the Appeal Brief filed on August 27, 2003, Appellants complied with the requirements set forth in 37 C.F.R. § 1.192 and M.P.E.P. § 1206. As noted by the Examiner, Appellants grouping of the claims includes claims 1-13 and 15, claims 16-24, and claims 25-32, which are separate groups that each stand or fall in the individual groups. Furthermore, Appellants provide separate explanations as to why each of the groups of claims is separately patentable and different from one another. Specifically, Appellants explained the different aspects of the present techniques as recited in independent claims 1, 16 and 25. *See* Appeal Brief, pages 7-8. Additionally, Appellants discussed each of the independent claims 1, 16 and 25 separately in the Appeal Brief based on the different aspects recited in each of the independent claims 1, 16 and 25. For instance, Appellants discussed the unique aspects of the recited features of independent claim 1 on pages 8-16, independent claim 16 on pages 16-20, and independent claim 25 on pages 20-24. *See* Appeal Brief, pages 8-24. As such, Appellants have presented arguments as to why the claims of each group are believed to be separately patentable.

Accordingly, Appellants believe the grouping of the claims in the Appeal Brief as filed on August 27, 2003, is correct.

Examiner's Remarks in Response to Argument

Secondly, Appellants traverse certain statements made by the Examiner in regards to the rejections formulated in the Response to Argument section in the Examiner's Answer. Specifically, Appellants disagree with the Examiner's assertions that the terms "data communications control system" and "service request" are vague and do not have a special meaning in the claims. Also, Appellants disagree with the Examiner's assertions in relation to the term "diagnostic system."

In an application, any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 45 U.S.P.Q.2d 1429, 1432 (Fed. Cir. 1998). Under M.P.E.P. § 2111.01, when the specification provides definitions for terms appearing in the claims, the specification should be used in interpreting claim language. *In re Vogel*, 164 U.S.P.Q. 619, 622 (C.C.P.A. 1970). Furthermore, it is well settled that a patentee may define a claim term either in the written description of the patent or, as in the present case, in the prosecution history. *See Mycogen Plant Science v. Monsanto Co.*, 243 F.3d 1316, 1327, 58 U.S.P.Q.2d 1030, 1039 (Fed. Cir. 2001). Although the inventor's definition does not have a narrowing effect, it is nonetheless relevant in indicating the meaning of the invention ascribed to the term. *See Vitronics Corp. v. Conceptronic Inc.*, 90 F. 3d 1576, 1582, 39 U.S.P.Q.2d 1573, 1577 (Fed. Cir. 1996).

With regard to the term "data communications control system," the Examiner asserted that the passages relied upon by Appellants included noncommittal terms that do not impart a specific definition. Appellants disagree with the Examiner's assertion because the term *data communications control system* is believed to be clearly defined in the application and the prosecution history. Specifically, Appellants describe the data

communications control system (DCCS) 40 as being coupled to a network for receiving or accessing data from the client, and for exchanging data with one or more remote service or data providers. *See* Application, page 7, lines 13-16. The DCCS 40 includes a central processing unit 86, memory circuitry 92, a communications interface 88, one or more peripheral interfaces 96, applications 106, and a software suite 108. *See* Application, Fig. 2; page 10, line 1 to page 11, line 12. In addition, the DCCS 40 includes software for associating collected data from diagnostic systems in a relational manner, which includes the identification of the system, the locations, utilization data, as well as a variety of other parameter data useful in determining the operational state of the system and possible need for service. *See* Application, page 11, lines 17-26. These specific features are once again reiterated in the Appeal Brief on pages 10-12. As such, the “data communications control system” is clearly defined in the application and the prosecution history.

Furthermore, with regard to the term “service request,” the Examiner again asserted that the passages relied upon by Appellants included noncommittal terms that do not impart a specific definition. Appellants disagree with the Examiner’s assertion because the term *service request* is believed to be clearly defined in the application, the prosecution history, and the claims. In the application, a data request may include a request for maintenance or servicing of the systems, request for information, request for documents, request for examination of protocols, request for software upgrades, and so forth. *See* Application, page 3, lines 25-31. For individual diagnostic systems, a connection may be established to initiate data required for providing the service, analyzing potential or existing problems, which are service requests. *See* Application, page 2, lines 8-14. Further, the present application even states that it is directed to transmitting operational data and parameters for a series of medical diagnostic systems to a remote service provider. *See* Application, page 5, lines 1-4. In addition to the clear definition set forth in the application, the *service request* is further defined in the recitations of independent claim 25. Specifically, claim 25 recites a “service request for addressing an operation of the designated diagnostic system.” Clearly, the *service request*

in the present recited claims is defined as relating to operational and parameter data associated with the diagnostic systems. As such, the term “service request” is believed to be clearly defined within the present application.

Moreover, with regard to the “diagnostic system,” the Examiner asserted that the limitations of *medical diagnostic imaging systems* are not recited in the rejected claims. Also, the Examiner asserted that the production of useful images based on physics or modalities is produced by workstations based on a passage from Appellants’ application for support of this assertion. Appellants disagree with the Examiner’s assertion because the term “diagnostic system” is believed to be clearly defined in the application, the prosecution history, and the claims. In addition, the Examiner appears to misconstrue the passage in the present application. First, the term “diagnostic system” should be understood to include diagnostic imaging systems designed to produce useful images of patient anatomies in accordance with particular physics or modalities. *See* Application page 5, lines 24-27. The diagnostic imaging systems are described as being magnetic resonance imaging (MRI) systems 26, a computed tomography (CT) 28, an X-Ray system 30, and an ultrasound system 32. *See* Application, page 6, lines 1-7. This point is once again reiterated in the Appeal Brief on pages 12-13. In addition, the original claims 24 and 29 specifically recite “wherein the diagnostic systems include at least two imaging systems of different modalities.” As such, the term “diagnostic system” is believed to be clearly defined to include diagnostic imaging systems as part of the term.

Secondly, in the Response to Argument, the Examiner appears to have misconstrued the passage from the present application, which the Examiner relied upon to assert that “workstations are used to produce useful images based on physics or modalities.” As noted above, the term “diagnostic system” should be understood to include diagnostic imaging systems, which are utilized to produce the useful images based on physics or modalities. While the diagnostic system may include workstations, the workstations are not disclosed to perform the functions suggested by the Examiner. In sentences above the passage relied on by the Examiner, the application clearly states

that the diagnostic imaging systems are used to produce useful images of patient anatomies in accordance with particular physics or modalities, not the workstations. *See* Application page 5, lines 24-27. As such, it is clear that the Examiner's assertion is not supported by the application.

Conclusion

Based upon the above points of clarification in conjunction with the arguments made in the Appeal Brief, Appellants believe that the claims are clearly allowable over the cited art. The Examiner's rejections, therefore, cannot stand.

Respectfully submitted,

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